

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**Radio Systems Corp**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation pay/Paid Time Off (PTO) pay  
RSA 275:44 IV liquidated damages

**Employer:** Radio Systems Corporation, 10427 Electric Ave, Knoxville, TN 37932

**Date of Hearing:** September 1, 2015

**Case No.:** 50732

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant originally asserted, through the filing of her wage claim, she was owed \$2,740.29 for 63.33 hours of unpaid paid time off (PTO) and because her regular wages were paid fourteen days late. She crossed out the original amounts on the wage claim form and then asserted she was due \$6,577.04 for 152 hours of unpaid PTO and because her regular wages were paid fourteen days late.

She then submitted an amendment to the wage claim, adding liquidated damages for the failure to pay her PTO pay and paying her regular wages late, totaling \$26,663.56.

Subsequently, she amended her claim again, correcting the liquidated damages as she had included greater than the ten days allowed by RSA 275:44 IV, totaling \$15,763.98.

The employer denies the claimant is due any wages. The claimant's termination date was May 31, 2015. She received her regular wages in full on May 29, 2015.

They did not make the PTO payment on May 29, 2015, because it seemed odd she had not used any PTO time for all of 2015. Once they verified she had not used any PTO time, they cut a check on June 16, 2015 for 63.33 hours.

## **FINDINGS OF FACT**

The claimant argues the employer terminated her employment on May 16, 2015, and did not pay her wage until May 29, 2015. She asserts liquidated damages should be assessed.

The employer notified the claimant on May 16, 2015, that her employment was terminated effective May 31, 2015. Her pay and benefits continued through May 31, 2015. She last physically worked for the benefit of the employer on May 16, 2015.

The Hearing Officer finds the claimant's termination date is May 31, 2015. The employer paid the claimant's regular wages within the prescribed timeframe of RSA 275:44 IV and prior to her termination date. Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence the employer is liable for liquidated damages for this portion of the wage claim.

The claimant argues the employer failed to pay her the full 152 hours of PTO she had accrued. Instead, the employer paid only 63.33 hours at a rate of \$43.27. She seeks \$4,490.67 for the balance.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding vacation/PTO pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275: 49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer notified the claimant of the written policy regarding the PTO policy upon hire.

The employer acknowledged that the PTO policy had been updated during the claimant's employment. The original policy stated PTO could only be used as an employee accrued the PTO time. The policy change provided employees with the ability to use the total time that would accrue for the year, on January 1 of that year.

The parties disagree as to whether the claimant received the change in the PTO policy. However, the change in policy provided additional benefits to the existing policy regarding the use of the PTO only. The employer did not make any changes to the accrual of PTO.

The written policy states, in relevant part, "For full time associates, the full year of PTO is advanced January 1 and earned throughout the remainder of the year. Should the employment relationship end and the associate has used PTO in excess of what is earned through the termination date, the company will deduct any unearned balance of PTO from the associate's final paycheck. On the other hand, if the associate has earned more PTO than they have used through the termination date, Radio Systems Corporation will pay any unused earned PTO in the associate's final paycheck."

The employer paid the claimant for all earned but unused PTO pay under the written policy of the employer.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed PTO pay under the written policy of the employer.

The claimant asserts the employer did not pay her PTO within the prescribed time frame in RSA 275:44, and therefore, they should be held liable for liquidated damages.

The claimant's date of termination was May 31, 2015. Pursuant to their written policy, "Radio Systems Corporation will pay any unused earned PTO in the associate's final paycheck." The claimant received her final regular wages on May 29, 2015.

The employer did not pay the accrued but unused PTO pay of 63.33 hours on May 29, 2015, because it seemed odd she had not used any PTO time for all of 2015. Once they verified she had not used any PTO time, they produced a check on June 16, 2015. The employer made multiple attempts to contact the claimant to verify her New Hampshire address to mail the check as she had left her home in California in May 2015 to travel to New Hampshire, for several weeks. The employer finally mailed the check to the claimant on or about June 22, 2015.

**RSA 275:44 Employees Separated From Payroll Before Pay Days. –**

I. Whenever an employer discharges an employee, the employer shall pay the employee's wages in full within 72 hours.

IV. If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The employer should have paid the claimant all PTO pay due within seventy-two hours of May 31, 2015, or June 3, 2015. They did not produce a check until June 16, 2015. The employer had the check available on that date, and the claimant's lack of response for their request for confirmation delayed the mailing of the check.

The employer's argument they had to research the claimant's 2015 PTO use is not persuasive.

The Hearing Officer finds that the claimant proved by a preponderance of the evidence that the employer willfully and without good cause failed to pay her all wages due in the time required as the employer was aware of the obligation and had the funds to pay.

### **DECISION AND ORDER**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers vacation/PTO pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is due any vacation/PTO pay, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant proved by a preponderance of the evidence that the employer willfully and without good cause failed to pay the PTO wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is valid in the amount of \$2,740.29.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$2,740.29, less any applicable taxes, within 20 days of the date of this Order.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: September 17, 2015

MJD/kdc